

United States
Circuit Court of Appeals
For the Ninth Circuit.

GARY SWAN,

Appellant,

vs.

CONSOLIDATED WATER COMPANY OF POMONA, a corporation, G. A. LATHROP, C. W. ALLISON, C. M. LATHROP, FRANK LATHROP, W. H. JOHNSTON, JAMES LONEY, S. M. HASKELL, J. P. STORRS, CLEFA BROWN-RIGG, CARL C. BOYD, F. C. BALFOUR, LILLIAN B. PARRY, F. B. ROBINSON, trustee, HELEN B. SMITH and J. E. STILLWELL, G. A. LATHROP AND J. E. STILLWELL, as executors of the Estate of Mrs. Emily Grady Gridley,
Appellees.

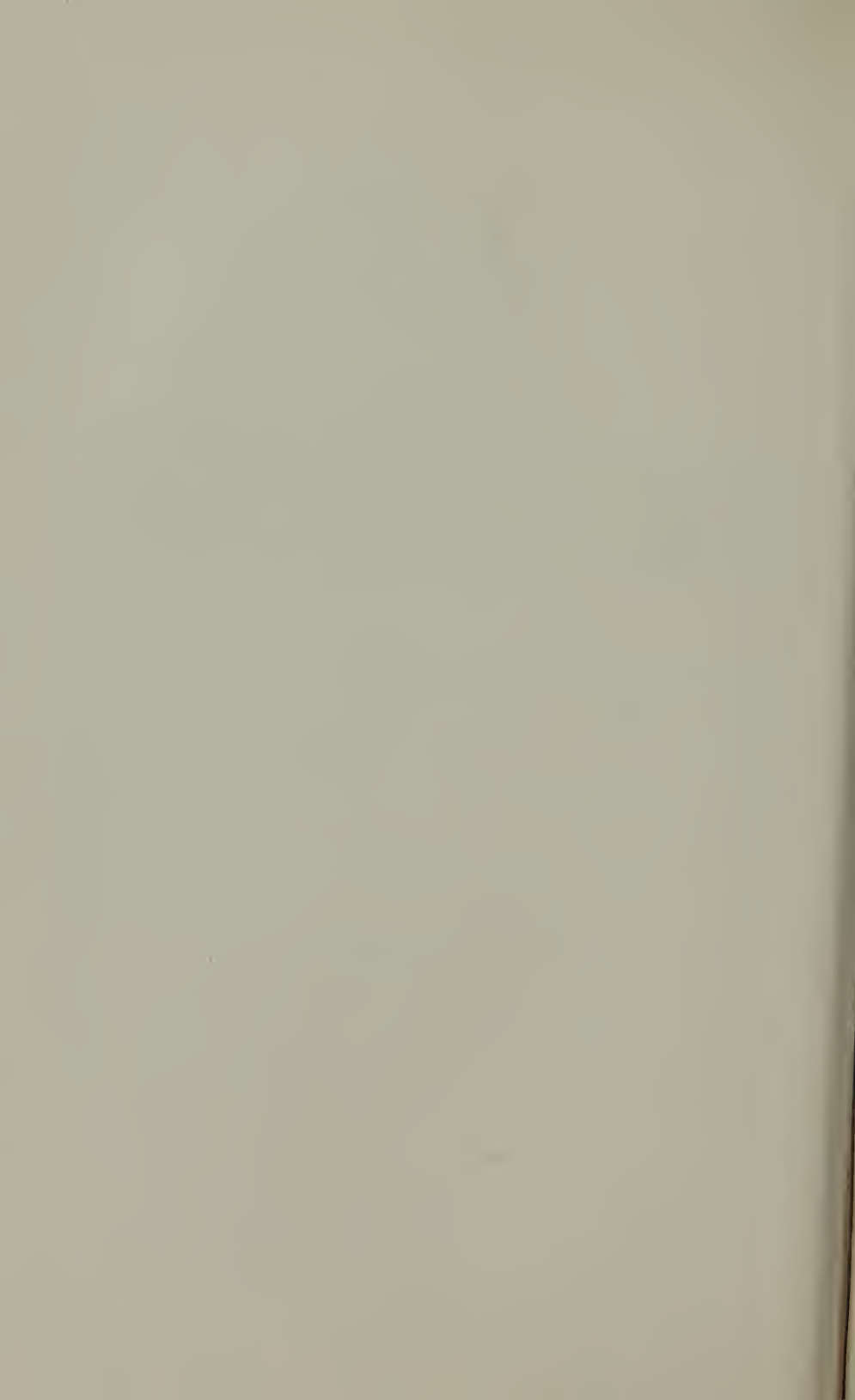
Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant :

ROBERT E. AUSTIN, Esq.,

JOHN N. HELMICK, Esq.,

414 Stock Exchange Building,
Los Angeles, California.

For Appellees :

KEMPER CAMPBELL, Esq.,

1408 C. C. Chapman Building,
Los Angeles, California.

United States of America, ss.

To Consolidated Water Company of Pomona, a corporation, G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnston and G. A. Lathrop, as executor of the estate of Mrs. Emily Brady Gridley, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 30th day of April, A. D. 1928, pursuant to Notice of Appeal filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain Case No. M 112 H, in which Gary H. Swan is plaintiff and Consolidated Water Company of Pomona and others are defendants, and you are required to show cause, if any there be, why the decree dismissing this cause in the said court above mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD J. HENNING United States District Judge for the Southern District of California, this 2nd day of April, A. D. 1928, and of the Independence of the United States, the one hundred and fifty second.

Edward J. Henning
U. S. District Judge for the Southern
District of California.

[Endorsed]: No. M 112 H In the United States
Circuit Court of Appeals for the Ninth Circuit Gary H.

Swan vs. Consolidated Water Company of Pomona, etc., et al. Citation Received copy April 3, 1928, Kemper Campbell, S. Filed Apr. 3, 1928 R. S. Zimmerman, Clerk, by L. J. Cordes, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

GARY H. SWAN,)	
Plaintiff,)	
vs.)	
CONSOLIDATED WATER)	
COMPANY OF POMONA,)	
a corporation, G. A. LATH-	)	IN EQUITY
ROP, C. W. ALLISON, C. M.)	
LATHROP, FRANK LATH-	)	BILL OF
ROP, W. H. JOHNSTON,	)	COMPLAINT
JAMES LONEY, S. M. HAS-	)	for
KELL, J. P. STORRS, CLEFA	)	DISSOLUTION OF
BROWNRIGG, CARL C.	)	CORPORATION
BOYD, F. C. BALFOUR,	)	AND FOR A
LILLIAN B. PARRY, F. B.	)	RECEIVER.
ROBINSON, trustee, HELEN)	
B. SMITH and J. E. STILL-)	
WELL, G. A. LATHROP)	
AND J. E. STILLWELL, as)	
executors of the Estate of Mrs.)	
Emily Grady Gridley,)	
Defendants.)	

The plaintiff, Gary H. Swan, for his cause of action herein, alleges:

I.

That plaintiff is now and has been for several years last past, a citizen of the State of Ohio; that the defendant, Consolidated Water Company of Pomona is a

corporation organized and existing under the laws of the State of California, with its office and principal place of business in the City of Los Angeles, California; that the defendants, G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnston, James Loney, S. M. Haskell, J. P. Storrs, Clefa Brownrigg, Carl C. Boyd, F. C. Balfour, Lillian B. Parry, F. B. Robinson, trustee, Helen B. Smith and J. E. Stillwell, G. A. Lathrop and J. E. Stillwell, as executors of the Estate of Mrs. Emily Brady Gridley, are citizens of the State of California, and reside within the Southern District of the State of California, Southern Division, and own all of the capital stock of the Consolidated Water Company of Pomona, except that owned by plaintiff.

II.

That the amount and value of the property in controversy herein is in excess of the sum of Three Thousand (3,000.00) Dollars.

III.

That the Consolidated Water Company of Pomona is a corporation duly organized and existing under the laws of the State of California, organized in the year 1896, with an authorized capital stock of \$500,000.00, divided into five thousand shares (5,000) of the par value of \$100.00 each, and all of said stock was issued immediately thereafter, and ever since has been and now is outstanding.

IV.

That the plaintiff is now and has been for many years last past, the bonafide owner of sixty-five shares of the capital stock of said Consolidated Water Company of Pomona, standing in his name on the books of said

corporation, and each of said shares is worth more than one Hundred Twenty (\$120.00) Dollars.

V.

That plaintiff and defendants are all of the stockholders of said corporation, as plaintiff is informed and believes, and plaintiff brings this action for his own benefit and the benefit of all other stockholders, who care to join therein, and on behalf of said corporation.

VI.

That said corporation was organized for the purpose as set forth at length in its articles of incorporation, of acquiring wells, pipe lines, flumes, ditches, water privileges, etc., etc., in the Counties of Los Angeles and San Bernardino, California, for the supplying of water for household, domestic, irrigation and other public and private purposes to the inhabitants of San Jose Township and vicinity, County of Los Angeles, State of California, and more particularly to the inhabitants of the City of Pomona.

VII.

That immediately after the organization of said corporation, it proceeded to acquire wells, pipe lines, flumes, ditches, water privileges, etc., etc., necessary and convenient for supplying the inhabitants of said San Jose Township and vicinity, and especially the inhabitants of said City of Pomona, with water for public and private purposes, and has since until about a year ago, so continued to acquire such necessary and convenient properties and has furnished water to the inhabitants of said San Jose Township and said City of Pomona until or about the 5th day of October, 1926.

VIII.

That the business of said corporation, as aforesaid, was prosperous and profitable and from a small investment of the incorporators and stockholders, the business and assets of the company increased until on said 5th day of October, 1926, the value of its wells, pipelines, flumes, ditches, water privileges, franchises, business and property employed in furnishing water as aforesaid was in excess of the sum of \$800,000.00, and its annual net profit on said date, as plaintiff is informed and believes, was in excess of \$50,000.00.

IX.

That said G. A. Lathrop now and for more than ten years last past, has had absolute control of said corporation and its affairs, through dummy directors and has used said corporation and its assets for his own purposes to the detriment of said corporation and the other stockholders. That said corporation has earned profits of more than \$500,000.00 in excess of its losses and running expenses, but no dividends have ever been paid except two; one of 2%, and the other of 4%, aggregating \$30,000.00; that the balance of the earnings of said corporation have been paid out to said Lathrop and his friends under guise of salaries and compensation for services rendered or accumulated in the hands of the corporation and used for the benefit of said Lathrop and his friends to the great detriment of this plaintiff and other stockholders.

X.

That for more than ten years last past, said Lathrop caused said corporation to pay him a salary of \$400.00 per month, and to pay to Emily Brady Gridley a salary

of \$250.00 per month; that the said Gridley did nothing whatever of value for said corporation and said Lathrop rendered it no service commensurate with the salary so paid. That prior to the 29th day of December, 1926, said Lathrop had diverted sums of money belonging to Consolidated Water Company of Pomona, aggregating \$20,722.00, to the Pacific Land and Cattle Co., a corporation owned by said Lathrop, and members of his family, and on said 29th day of December, 1926, he caused the board of directors of the Consolidated Water Company of Pomona to vote to him said sum in cancellation of said indebtedness and on said date, he caused said board of directors to vote him the additional sum of about \$2,500.00 to satisfy an overdraft of said Lathrop on the books of the company, and on said date, he caused a sum of about \$1,500.00 to be voted to said Gridley to satisfy an overdraft on her account on the books of the company. Said amounts were credited to the accounts of said Lathrop, the Pacific Land and Cattle Company, and said Mrs. Gridley, and the obligations herein mentioned were thereby discharged. That neither said Lathrop nor Mrs. Gridley had rendered said corporation any services whatsoever to justify said payments.

XI.

That plaintiff is informed and believes that at many other times and in many other ways the assets of said corporation have been diverted by said Lathrop and asks that he be required to come into this Court and show what monies and property of said corporation he has diverted to his own use and to account therefor.

XII.

That plaintiff has not demanded of the officers of said corporation that they bring suit against said Lathrop for an accounting of the matters set out above, because of the fact that they are subservient to his will and would refuse to do so and such demand would be useless.

XIII.

That during the year 1926, plaintiff is informed and believes the directors of said corporation were G. A. Lathrop, president; C. W. Allison, secretary; C. M. Lathrop, Frank Lathrop and W. H. Johnston. Plaintiff is informed and believes and on such information and belief, alleges that the said G. A. Lathrop owns 2389½ shares of stock in said corporation; and is one of the executors of the Estate of Mrs. Emily Brady Gridley, which owns 2080 shares; C. W. Allison owns five shares; C. M. Lathrop one share; Frank Lathrop one share; and W. H. Johnston, one share. That the said C. W. Allison is the son-in-law of said G. A. Lathrop, C. M. Lathrop is the wife of said G. A. Lathrop; Frank Lathrop is the son of said G. A. Lathrop; and said W. H. Johnston, a clerk in the office of said corporation, holding one share of stock for qualifying purposes, for the use and benefit of said G. A. Lathrop. That none of said directors except G. A. Lathrop have any substantial interest in said corporation, but each of them holds office as the tool of said Lathrop and is subservient to his will and as director, takes such action as said Lathrop directs without any independent thought of his own for the welfare of said corporation.

XIV.

That on the 9th day of August, 1926, the said Board of Directors at the request and under the direction of said G. A. Lathrop and without any authorization therefor from the stockholders passed a resolution directing the officers of the corporation to sell the wells, pipelines, flumes, ditches, water privileges, franchises, business and property of said corporation employed and used in furnishing water to the inhabitants of San Jose Township and vicinity and to the inhabitants of the City of Pomona, to the City of Pomona, for about \$831,000.00.

XV.

That on or about the 10th day of September, 1926, without any authority therefor from the stockholders of the Consolidated Water Company of Pomona, said G. A. Lathrop made application on behalf of said corporation to the Railroad Commission of the State of California, for authority to sell the water system, rights, plant, business and substantially all of the property of said corporation to the City of Pomona, California; said application in the files of said railroad is No. 131163, and is entitled, "In the matter of the Consolidated Water Company of Pomona, a corporation organized for the purpose of supplying the City of Pomona with domestic water making application to sell its water system to the City of Pomona and the City of Pomona joining in the application for the purpose of purchasing said system." That on the 5th day of October, 1926, said commission made its order permitting said sale.

XVI.

That on or about the 5th day of October, 1926, pursuant to said resolution, and in conformity with the said order of the Railroad the said G. A. Lathrop as

president, and said C. W. Allison as Secretary of said corporation, did execute and deliver Bills of Sale, and Conveyances on behalf of said corporation to the said City of Pomona, whereby said corporation transferred and conveyed to the City of Pomona all of its wells, pipe-lines, flumes, ditches, water privileges, franchises, business and property employed in furnishing water as aforesaid to the City of Pomona and vicinity, and the said City of Pomona immediately took possession thereof. That the said City paid the said Company therefor, approximately \$831,000.00; that said transfer of said property and franchises necessarily included the profitable business of furnishing water to inhabitants aforesaid, and included all the working capital and assets of said corporation, whereby it carried on said water business. That there are no other water rights and privileges which said corporation can acquire by which it could furnish water to the inhabitants of said San Jose Township and vicinity and to the inhabitants of the City of Pomona, were it permitted to do so.

XVII.

That the aforesaid sale, transfer and conveyance of the business and working capital assets of said corporation was made by the said G. A. Lathrop through said Board of Directors and dominated and controlled by him as aforesaid, and no meeting of the stockholders was called or held to consider the sale and transfer of the working capital assets of the corporation as aforesaid, and said sale and transfer was made without notice to or consent of this plaintiff and other stockholders of said corporation.

XVIII.

That by the sale and the transfer of the water system franchises and business of said corporation, as aforesaid, it wound up and completed its business and its purpose was fulfilled, and there was then and is now, no reason for its continued existence and it should be dissolved and its assets distributed to its stockholders.

XIX.

That said corporation more than a year ago, paid its debts, wound up and completed its business and now has on hand in cash and securities, in excess of \$650,000.00; that during all of said time, said corporation has been in condition to be dissolved and its assets distributed to its stockholders, but the said G. A. Lathrop has refused to bring about its dissolution or permitted it to be done.

XX.

That heretofore on July 28, 1927, plaintiff demanded of said Lathrop and the Consolidated Water Company of Pomona, and its board of directors that they immediately take such action as might be necessary to bring about the dissolution of said corporation, and the distribution of its assets among its stockholders, but they and each of them refused and neglected to do so, or to take any action relating thereto.

XXI.

That thereafter, on August 31, 1927, at the annual meeting of the stockholders of said Company, plaintiff offered a resolution directing the officers and directors of said corporation to take such action as might be necessary to bring about a dissolution of said corporation; that all stockholders present except said Lathrop and those under his control, and estate of Emily Brady

Gridley, voted in favor of said resolution. That said Lathrop was and is one of the executors of said estate which owns 2080 shares of the capital stock of said Company, and J. E. Stillwell was and is the other executor of said estate. That all of the legatees of said estate had requested said executors in writing to vote the stock of said estate in favor of said resolution, and the said Stillwell did so vote said stock, but the said Lathrop as executor, disregarding his duty as trustee and the welfare and wishes of the beneficiaries of said estate, and acting in his own interest, voted said stock against said resolution and thereby prevented the vote of said stock from being received or counted on said resolution and said resolution was lost.

XXII.

That at the stockholders meeting aforesaid, after the resolution aforesaid failed to carry, plaintiff offered a resolution directing the officers of said Corporation to call a meeting of the stockholders of said corporation to be held on October 19, 1927, to consider the matter of dissolving said corporation and distributing its assets. That said resolution carried and said meeting was called and was held on the 19th day of October, 1927, and at said meeting plaintiff again offered a resolution directing the officers and directors of said corporation to take such action as might be necessary to dissolve said corporation and distribute its assets among its stockholders. That all of the stockholders present or represented at said meeting, except said Lathrop, and the members of his family, and the said estate, voted for said resolution; that the estate of Emily Brady Gridley, then owned 2080 shares of the capital stock of said corporation, and all

of the legatees of said estate had requested the executors of said estate in writing to vote in favor of said resolution and J. E. Stillwell, co-executor with said Lathrop voted therefor; but said Lathrop disregarding his duty as trustee for said legatees and for the purpose of promoting his own personal interest, voted said stock against said resolution as executor, and voted all of the other stock which he or members of his family controlled against said resolution, and said resolution was thereby lost.

XXIII.

That said G. A. Lathrop for the purpose of promoting his own personal interest, and for the purpose of enabling himself to better use said corporation and its assets for his own purposes, has moved its principal place of business from the City of Pomona to the City of Los Angeles; has determined to change its name and to cause it to engage in other and different lines of business, and has, as plaintiff is informed and believes, loaned large amounts of the corporation's money to the Pacific Land and Cattle Co., a corporation, owned by said Lathrop and members of his family, and has otherwise loaned its funds to great advantage to himself.

XXIV.

That said Lathrop by reason of his mismanagement of said corporation, his diversion of its assets, his disregard of the rights and interests of those whose property and interests come under his control, is not a fit or proper person to have control of the property or interests of this plaintiff or of the other minority stockholders of said corporation, and unless this Court takes charge of said corporation and its assets, said Lathrop will

further divert them from their proper use to other and different uses and to his own purposes and this plaintiff will continue to be deprived of the use and benefit of his said property and will suffer a total loss thereof as will all the other minority stockholders.

XXV.

That plaintiff was a stockholder of said Consolidated Water Company of Pomona at the time of all of the transactions complained of herein, and was at all of said times a citizen of the State of Ohio; that this suit is not a collusive one to confer on this Court jurisdiction of a case of which it would not otherwise have cognizance.

WHEREFORE, plaintiff prays that said Lathrop be required to account in this Court for all of the funds and property of said corporation which have come into his hands or under his control; that pending said accounting and final hearing hereon, a receiver be appointed to take charge of said corporation, assemble and conserve its assets for the use and benefit of those entitled thereto, and upon final hearing make and enter its decree dissolving said corporation and distributing its assets and that such other and further relief be granted as to the Court may seem proper in the premises.

Robert E. Austin

John N. Helmick

Attorneys for Plaintiff.

STATE OF CALIFORNIA)
)SS
COUNTY OF LOS ANGELES)

ROBERT E. AUSTIN being first duly sworn, deposes and states: that he is the attorney for plaintiff in the above entitled action; that he verifies this complaint for and on behalf of plaintiff because the plaintiff is absent from this jurisdiction and because of the fact that affiant has knowledge of the matters set forth in the complaint herein. That the statements contained in the above and foregoing Bill of Complaint are true and correct.

Robert E. Austin

Subscribed and sworn to before me this 4th day of November, 1927.

Naomi Jenetzky
Notary Public.

[Seal]

[Endorsed]: Original. No. M 112 H In the District Court of the United States Southern District of California Southern Division Gary H. Swan, Plaintiff, vs. Consolidated Water Company of Pomona, etc., et al., Defendants. In Equity Bill of Complaint for Dissolution of Corporation and a Receiver Filed Nov. 7, 1927, R. S. Zimmerman, R. S. Zimmerman Clerk Robert E. Austin & John N. Helmick Attorneys for Plaintiff. 414 Stock Exchange Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

GARY H. SWAN,)	
	Plaintiff,)
vs.)	
CONSOLIDATED WATER)	
COMPANY OF POMONA,)	
a corporation, G. A. LATH-)	
ROP, C. W. ALLISON, C. M.	)	In Equity
LATHROP, FRANK LATH-)	
ROP, W. H. JOHNSTON,	)	No. M 112 H
JAMES LONEY, S. M. HAS-)	
KELL, J. P. STORRS, CLEFA)	
BROWNRIGG, CARL C.	)	MOTION TO
BOYD, F. C. BALFOUR.	)	DISMISS
LILLIAN B. PARRY, F. B.)	
ROBINSON, trustee, HELEN)	
B. SMITH and J. E. STILL-)	
WELL, G. A. LATHROP)	
AND J. E. STILLWELL, as)	
executors of the Estate of Mrs.)	
Emily Brady Gridley,)	
Defendants.)	

Come now CONSOLIDATED WATER COMPANY OF POMONA, a corporation, G. A. LATHROP, C. W. ALLISON, C. M. LATHROP, FRANK LATHROP, W. H. JOHNSTON and G. A. LATHROP, as executor of the estate of Mrs. Emily Brady Gridley, defendants in the above entitled action, and move the court to dismiss the bill of complaint filed therein upon the ground that there is insufficiency of fact to constitute a valid

cause of action in equity against said defendants, or any of them.

Kemper Campbell

Attorney for defendants, Consolidated Water Company of Pomona, a corporation, G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnston, and G. A. Lathrop, as executor of the estate of Mrs Emily Brady Gridley.

[Endorsed]: In Equity No. M 112 H In the United States District Court Southern District of California, Southern Division. Gary H. Swan, Plaintiff, vs. Consolidated Water Company of Pomona, a corporation, et al., Defendants. Motion to Dismiss Received copy of the within motion this 25 day of Nov 1927 Robert Austin John N. Helmick atty for ptf Filed Nov. 25, 1927 R. S. Zimmerman, clerk by Edmund L. Smith, Deputy Clerk Kemper Campbell attorney at law 1408 Chapman Building Phone 63144 Los Angeles Attorney for within enumerated defendants

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

GARY H. SWAN,)	
	Plaintiff,)
vs.)	
CONSOLIDATED WATER)	
COMPANY OF POMONA,)	
a corporation, G. A. LATH-	)	In Equity
ROP, C. W. ALLISON, C. M.	)	No. M 112 H
LATHROP, FRANK LATH-)	
ROP, W. H. JOHNSTON,)	
JAMES LONEY, S. M. HAS-	)	DECREE DIS-
KELL, J. P. STORRS, CLEFA	)	MISSING SUIT
BROWNRIGG, CARL C.	)	ON DEFENDANTS'
BOYD, F. C. BALFOUR,	)	MOTION TO
LILLIAN B. PARRY, F. B.	)	DISMISS
ROBINSON, trustee, HELEN)	
B. SMITH and J. E. STILL-)	
WELL, G. A. LATHROP)	
and J. E. STILLWELL, as ex-)	
ecutors of the Estate of Mrs.)	
Emily Brady Gridley,)	
Defendants.)	

This cause came on to be argued at this term, and was argued by counsel and was thereupon submitted on briefs and upon consideration thereof it was on the 7th day of January, 1928, ordered, adjudged and decreed that the motion of defendants to dismiss the above action for want of jurisdiction and for insufficiency of fact to constitute a valid cause of action in equity be granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants' motion to dismiss be sustained, and that this cause be and

United States, in and for the Southern District of California, Southern Division, the following, to-wit:

1st—Error of the said Court in sustaining the motion of defendants, G. A. Lathrop, et al., to dismiss plaintiff's bill of complaint.

2nd—Error of the Court in holding that said Court did not have jurisdiction of the cause set up in plaintiff's bill of complaint.

3rd—Error of said Court in holding that there was "insufficiency of fact to constitute a valid cause of action in equity", in said bill of complaint.

4th—Error of the said Court in rendering judgment and making and entering its decree "dismissing plaintiff's suit" upon the sustaining of said defendants' motion to dismiss.

WHEREFORE, the plaintiff, Gary H. Swan, prays that the decree of the District Court of the United States in and for the Southern District of California, Southern Division so rendered, be reversed, set aside and held for naught and that a decree be rendered in favor of plaintiff upon its bill of complaint in this cause.

Robert E. Austin

John N. Helmick

Attorneys for Plaintiff.

[Endorsed]: Original. No. M 112 H In Equity In the District Court of the United States Southern District of California, Southern Division. Gary H. Swan, plaintiff, vs. Consolidated Water Company of Pomona, etc., et al. defendants. Assignment of Errors. Filed Apr. 2, 1928. R. S. Zimmerman, R. S. Zimmerman Clerk. Robert E. Austin & John N. Helmick attorneys for plaintiff, 414 Stock Exchange Building, Los Angeles, California

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION

GARY H. SWAN,)	
Plaintiff,	)	In Equity
vs.	)	No. M 112 H
CONSOLIDATED WATER)	
COMPANY OF POMONA,	)	NOTICE OF
a corporation, et al.,	)	APPEAL
Defendants.)	

To Consolidated Water Company of Pomona, a corporation;

To G. A. Lathrop;

To C. W. Allison;

To C. M. Lathrop;

To Frank Lathrop;

To W. H. Johnston;

To G. A. Lathrop, defendants herein, and

To Kemper Campbell, their attorney, and

To James Loney;

To S. M. Haskell;

To J. P. Storrs;

To Clefa Brownrigg;

To Carl C. Boyd;

To F. C. Balfour;

To Lillian B. Parry;

To F. B. Robinson, trustee;

To Helen B. Smith and J. E. Stillwell; defendants;

YOU AND each of you will please take notice that the plaintiff, Gary H. Swan hereby appeals from that certain decree heretofore made, filed and entered herein, on the 3rd day of March, 1928, and from the whole thereof, to the Circuit Court of Appeals.

Dated March 7, 1928.

Robert E. Austin
John N. Helmick
Attorneys for Plaintiff.

[Endorsed]: No. M. 112 H. In the District Court of the United States, Southern District of California, Southern Division. Gary H. Swan, plaintiff vs. Consolidated Water Company of Pomona, etc., et al., defendants. Notice of Appeal. Received copy of the within notice this 7th day of March, 1928. J. P. Storrs, defendant. Received copy of the within notice this 7th day of March 1928. Helen B. Smith, defendant. Received copy of the within notice this 9th day of March, 1928. Kemper Campbell, attorneys for defendants—G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnson and G. A. Lathrop. F. B. Robinson, Trustee. Filed Mar. 10, 1928. R. S. Zimmerman, Clerk by L. J. Cordes, Deputy Clerk. Robert E. Austin & John N. Helmick attorneys for plaintiff. 414 Stock Exchange Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

GARY H. SWAN,)	
	Plaintiff,)
vs.	)	In Equity
CONSOLIDATED WATER	)	No. M 112 H
COMPANY OF POMONA,)	
etc., et al.,	)	ORDER FIXING
	Defendants.)
		THE BOND ON
		APPEAL.

WHEREAS, the Court has heretofore made and filed its decree in this cause dismissing plaintiff's bill of complaint, and

WHEREAS, said plaintiff is dissatisfied with the said decree and has appealed therefrom and has requested this Court to make its order fixing the amount of the Bond on Appeal herein, and it appearing to be a proper case therefor,

IT IS THEREFORE ORDERED that the amount of plaintiff's bond on appeal in this cause be and the same is hereby fixed at the sum of \$250.00.

Dated April 2nd, 1928.

Edward J. Henning
JUDGE.

[Endorsed]: Original. No. M 112 H In Equity. In the District Court of the United States Southern District of California, Southern Division. Gary H. Swan, plaintiff, vs. Consolidated Water Company of Pomona, etc., et al. defendants. Order Fixing Bond on Appeal. Filed Apr. 2, 1928. R. S. Zimmerman, R. S. Zimmerman Clerk Robert E Austin & John N. Helmick, attorneys for plaintiff, 414 Stock Exchange Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION

GARY SWAN,)	
	Plaintiff,)
vs.	)	In EQUITY
CONSOLIDATED WATER	)	No. M-112-H
COMPANY OF POMONA,	)	BOND ON APPEAL.
etc. et al.,)	
	Defendants.)

KNOW ALL MEN BY THESE PRESENTS, That I, GARY H. SWAN as principal, and the UNION INDEMNITY COMPANY, a corporation, as surety, are held and firmly bound unto the defendants and respondents, Consolidated Water Company of Pomona, a corporation, G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnston and G. A. Lathrop, as executors of the Estate of Mrs. Emily Brady Gridley, in the penal sum of Two Hundred Fifty (\$250.00) Dollars to be paid to said defendants, their heirs, successors, administrators or assigns, the payment of which well and truly to be made, we bind ourselves, our heirs, administrators and executors jointly and severally by these presents.

The conditions of the above and foregoing Undertaking, are that,

WHEREAS, the plaintiff in the above entitled cause has appealed from the decision and decree of the Court rendered therein, and has asked the said Court to fix the amount of his Undertaking on Appeal, and

WHEREAS, said Court has fixed the amount of said Undertaking at Two Hundred Fifty (\$250.00) Dollars as aforesaid.

NOW, THEREFORE, in consideration of the foregoing and of said Appeal, we, the said GARY H. SWAN, Plaintiff, and UNION INDEMNITY COMPANY, Surety, are held and firmly bound unto the defendants and respondents, Consolidated Water Company, a corporation, G. A. Lathrop, C. W. Allison, C. M. Lathrop, Frank Lathrop, W. H. Johnston and G. A. Lathrop, as executors of the Estate of Mrs. Emily Brady Gridley, in the penal sum of Two Hundred and Fifty (\$250.00) Dollars, lawful money of the United States, well and truly to be paid.

The conditions of this obligation are, that if the said plaintiff shall well and truly pay to said defendants all proper costs and expenses which may be incurred by reason of said Appeal, and taxed as costs in connection therewith in event the order or decree appealed from is sustained or in event the appeal is dismissed, then and in that event, this Undertaking shall be null and void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the principal and surety have hereunto set their hands the 3rd day of April, 1928.

GARY H. SWAN, Principal
BY Robert E. Austin, His
Attorney.

UNION INDEMNITY COMPANY,
Surety.

[Seal]

BY B. S. FRENCH
Its Attorney in fact.

UNITED STATES OF AMERICA
District Court of the United States
Southern District of California

GARY H. SWAN
VS.
CONSOLIDATED WATER
COMPANY OF POMONA,
etc., et al.

CLERK'S OFFICE

No. M 112 H
PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue for use as a record on Appeal in this cause certified copy of the Bill of Complaint, Motion to dismiss by the Consolidated Water Company of Pomona and others, the Decree entered herein on the 3rd day of March, and the plaintiff's Notice of Appeal, Order fixing Bond on Appeal, Bond on Appeal, Assignment of Errors, Citation and of this Praecipe.

Robert E. Austin

John N. Helmick

Attorneys for Plaintiff.

[Endorsed]: No. M 112 H U. S. District Court Southern District of California Gary H. Swan vs. Consolidated Water Company of Pomona, etc., et al. Praecipe Received copy of the within Praecipe this 3rd day of April, 1928. Kemper Campbell. Filed Apr. 3, 1928 R. S. Zimmerman Clerk. By L. J. Cordes Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

GARY H. SWAN,)	
	Plaintiff,	) In Equity
vs.	)	No. M 112 H
CONSOLIDATED WATER)	
COMPANY OF POMONA,	)	CLERK'S
etc., et al.,	)	CERTIFICATE.
	Defendants.)

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 27 pages, numbered from 1 to 27 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, bill of complaint, motion to dismiss, decree dismissing suit, assignment of errors, notice of appeal, order fixing bond, bond on appeal, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this.....day of....., in the year of Our Lord One Thousand Nine Hundred and Twenty-eight, and of our Independence the One Hundred and Fifty-second.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

